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TECHNICAL MEMORANDUM

DATE: October 23, 2008

TO: Erika Conkling and Renton Staff

FROM: David Sherrard, Parametrix

SUBJECT: Renton Shoreline Master Program
Regulatory Approach Options – Specific Issues

This Technical Memorandum addresses issues relating to Comprehensive Plan and Development Regulations format and general approach.

This is one of five Technical Memoranda that address the framework of decisions needed to be made to implement the 2003 Shoreline Guidelines WAC 173-26. Other Technical Memoranda prepared to address other issues include:

- Regulatory Approach Options – Code Overview
- Opportunities and constraints for maintaining and enhancing ecological functions
- Public access opportunities
- Market Demand for Water Dependent Uses

Issues addressed in this memorandum include:

1. Water oriented uses
2. Vegetation management for non-single family uses
3. Vegetation management for single family building development
4. Building height

More detailed discussion of each of these issues is provided below.

1. Water Oriented Uses

Existing Code: The existing SMP provides that in Urban environments "emphasis shall be given to development within already developed areas and particularly to water-oriented industrial and commercial uses." (SMP 5.01.04.C., RMC 4-3-090-J-5-A)

SMA Guidelines: Preferred uses are addressed in a number of provisions:

a) The statute in RCW 90.58.020 provides a preference for uses that are unique to or dependent upon use of the state's shoreline."

b) The SMA Guidelines in WAC 173-26-020 and .201(2)(d) provides an explicit hierarchy of preference for uses that are particularly dependent on shoreline location or use in the following:

- A water dependent uses is a use that "cannot exist in any other location and are dependent on the water by intrinsic nature of its operation". Examples of water-dependent uses include shipyards and dry docks, ferry terminals, waterborne cargo terminals, marinas, log booming, and aquaculture.
- Water-related uses are those not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location. Examples include vessel parts and equipment manufacture, container shipping yards, seafood processing plants, marine salvage yards and similar uses.
- Water enjoyment uses provide the opportunity for a significant number of people to enjoy the shoreline. They must be located, designed and operated to assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline and they must be open to the public with shoreline space devoted to public shoreline enjoyment. Examples include parks, fishing piers, museums, restaurants (depending on design) interpretive centers and resorts (depending upon design)
- Non-water-oriented uses have no functional relationship to the shoreline and are not designed to enhance the public's enjoyment of the shoreline.

c) WAC 173-26-201(2)(d) requires that a SMP:

- Reserve appropriate areas for water dependent uses that are compatible ecological protection and restoration objectives; unless the local government can demonstrate that adequate shoreline is reserved for future water dependent and water related uses;
- Reserve areas for water-related and water-enjoyment uses that are compatible with water-dependent uses and ecological protection and restoration objectives;
- Limit non-water oriented uses to those locations where either water-oriented uses are inappropriate or where non-water-dependent uses demonstrably contribute to the objectives of the Shoreline Management Act.

d) WAC 13-26-211(5)(d) contains the following provisions:

- Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required.
- In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses.
- Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act. [Note – those objectives are public access or ecological restoration. See WAC 173-26-241(3)(d)].

e) Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where

there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC 173-26-200

If an analysis of water-dependent use needs as described in WAC 173-26-201(3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.(WAC 173-26-211(5)(d)(iii)(A))

f) Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

   i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

   ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration. .

   In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

   (WAC 173-26-241(3)(d))

g) Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development. (WAC 173-26-211(3)(b))

h) Single-family residences are identified as an appropriate shoreline use by the statute in RCW 90.58.020. Multi-family residential use is not a preferred use and is not water-dependent or water oriented.

Options: The city has few options when it comes to meeting this standard:

a) The SMP must include the preference hierarchy for water-dependent, water-related, water-enjoyment and non-water-oriented uses for all but single-family uses. This means that multi-family development on the shoreline, such as the recent "Southport" development would not be allowed without a component of water-related or water enjoyment use or other "public benefit" such as ecological restoration or public access (which is required anyway).

   It is likely that water-dependent use potential is the city is limited primarily to moorage. As part of the SMP update, a Technical Memorandum has been prepared assessing the economic market for water dependent industrial and commercial uses. This study concludes that there is not likely to be a market for such uses. Moorage is discussed as a separate issues in item 7.X.

b) All water-related uses must be located and designed developed in a manner compatible ecological protection and restoration objectives. Practically speaking, this means they must be located in areas with the least impact on anadromous fish and other aquatic

species. This is likely to substantially limit location options and require substantial mitigation.

Recommendation:

a) Provide the appropriate criteria in the SMP consistent with the WAC in the SMP. These criteria are likely to result in an increase in mixed use projects on the shoreline and may be perceived as a conflict for areas that are currently primarily multi-family.

b) In the reach-based overlay district system provide the policy direction that future development will need, particularly whether, for example, water oriented uses are a priority, versus ecological enhancement and/or public access.

2. Shoreline vegetation management for non-single family shorelines

Existing Code: The existing SMP provides in

a) Section 6.08.03(a)(i) provides the standard buffer is a minimum 100-foot buffer measured from the ordinary high water mark.

b) Section 6.08.03(b)(ii) however provides that for developed shorelines on sites predominantly containing impervious surfaces in the shoreline buffer areas the buffer widths shall be considered building setbacks.

c) Subsection 6.08.03.d(iii)(d)(iv) provides a buffer of

   i) 75 feet for non-water-oriented development, unless otherwise listed [6.08.03.d(iii)(d)(iv)(a)]..

   ii) 50 feet for water related or water enjoyment development, unless otherwise listed [6.08.03.d(iii)(d)(iv)(b)]..

   iii) 50 feet for multi-family development in the Urban Environment along the Cedar River [6.08.03.d(iii)(d)(iv)(c)]..

   iv) 25 feet for existing essential public facilities in the Urban Environment not otherwise considered water dependent. The appropriate buffer/setback shall be based on the facility type, conformance with adopted master plans, ability to provide for safe public access, or other legal or safety concerns [6.08.03.d(iii)(d)(iv)(e)]..

   v) 25 feet for water dependent development that does not require an abutting shoreline location. Ancillary water related or water enjoyment uses may be co-located with water dependent uses [6.08.03.d(iii)(d)(iv)(f)]..

d) Subsection 6.08.04.b Sites with Developed Shorelines provides that where the shoreline is largely in an unnatural state and the buffer predominantly contains impervious surfaces due to existing, legally permitted activities, the following standards shall apply:

   i) streams and lakes shall be undisturbed.

   ii) No new buildings may be constructed within the required buffer.

   iii) Where impervious surfaces exist in buffer areas, such impervious surfaces shall not be increased or expanded within the buffer area. The extent of impervious surfaces within the buffer area may only be re-arranged if the reconfiguration of impervious surfaces and restoration of prior surfaced areas is part of an enhancement proposal that improves ecological function of the area protected by the buffer.

iv) Existing native vegetation shall be preserved or enhanced to the extent possible, preferably in consolidated areas.

v) The proposal will result in, at minimum, no-net loss of stream/lake/riparian ecological function;

vi) Specific criteria of Section 7 shall apply to the specific use or activity in addition to Section 6.

e) Subsection 6.08.03.d.i allows buffer reduction with buffer enhancement including the following provisions:

i) The project includes a buffer enhancement plan using native vegetation and provides documentation that the enhanced buffer area will maintain or improve the functional attributes of the buffer; or

ii) In the case of existing developed sites where a natural buffer is not possible, the proposal includes on- or off-site riparian/lakeshore or aquatic enhancement proportionate to its project specific or cumulative impact on shoreline ecological functions; or

SMP Guidelines

The current guidelines devote many pages to discussion of the importance of shoreline vegetation to ecological functions and includes reference to vegetation in many criteria and standards. This discussion only references key provisions.

a) Vegetation conservation is a separate section in WAC 173-26-221 (5).

i) Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

ii) Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).

iii) Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.

iv) In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a).

b) Vegetation is one of the elements that would be involved in "ecological restoration" that must be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible. [WAC 173-26-411(3)(d)]

c) Vegetation is likely to be the major element involved in allowing nonwater-oriented commercial uses within the shoreline, which requires that the development provide "a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration." [WAC 173-26-411(3)(d)].

Options: The city has three basic options when it comes to meeting this standard:

a) Continue to employ the current code that requires enhancement of vegetation is required as a condition of reducing standard buffers in 6.08.03.d.iv.

Advantages are that this provision is likely to be used extensively since it provides a substantial reduction.

Disadvantages include:

- Standards are not provided. The criteria is "the enhanced buffer area will maintain or improve the functional attributes of the buffer." This could result in wide variation in application
- The criteria that the buffer will "maintain" the functional attributes of the buffer could result in no improvement to ecological conditions,
- Applied to nonwater-oriented development it may not provide the "significant public benefit" with respect ecological restoration" that is a condition for location in the shoreline found in WAC 173-26-411(3)(d).
- Applied to water-related or water-dependent commercial development the standard is not likely to meet the criteria for "ecological restoration" that must be considered as potential mitigation of impacts to shoreline resources and values provided in . WAC 173-26-411(3)(d) and would therefore require case-by-case analysis and mitigation.
- The lack of specificity would make it difficult to document that the regulation achieves no net loss of ecological function on a cumulative basis or that it fairly allocates the burden of addressing cumulative impacts as provided in WAC 173-26-201(3)(d)(iii).

b) Strengthen the criteria and standards in the existing code on a general basis to provide for a level of enhancement that clearly improves ecological function.

Advantages are:

- It would be widely used since the benefit is substantial.
- Specific standards would avoid wide variation in application
- More stringent standards could assure that when applied to nonwater-oriented development it would provide the "significant public benefit" with respect ecological restoration" provided for in WAC 173-26-411(3)(d).
- More stringent standards could assure that when applied to water-related or water-dependent commercial development the standard may reduce the need for case-by-case analysis and mitigation.

Disadvantages are:

- It would use the same, or similar standards for widely varying applications.
- It would not use the information on ecological processes of specific shoreline reaches found in the Inventory/Characterization.

c) Develop specific regulations based on the specific reaches as provided for in the as provided in the recommendation for the Shoreline Geographic Environment Designations in item (3) Shoreline Regulatory Options, addressed in the Technical Memo on Regulatory Approach Options – Code Overview.

Advantages are:

- It would provide predictability for administration an property owners
- It would reduce variation in application
- It would use the information developed in the Inventory/Characterization
- Specific standards for each reach would integrate city policies and regulations for upland use;
- The specific mix of ecological restoration and/or public access required for non-water-oriented development would be specified in advance.
- It may be possible to provide guidance on the mitigation to be provided and reduce the need for case-by-case analysis and mitigation.

Disadvantages are:

- It would involve a more complex system (but similar to zoning)

Recommendation:

In the reach-based overlay system provide any needed variation in standards based on the ecological character of the reach, as well as balancing other goals, such as water-oriented uses or public access.

3. Shoreline vegetation management for single family residential shorelines

Existing Code: The existing SMP provides in

a) Section 6.08.03(a)(i) provides the standard buffer is a minimum 100-foot buffer measured from the ordinary high water mark

b) Section 6.08.03(b)(ii) however provides that for developed shorelines on sites predominantly containing impervious surfaces in the shoreline buffer areas the buffer widths shall be considered building setbacks,

c) Section 6.08.03.d.i that allows buffer reduction with buffer enhancement does not require enhancement for "an existing single family residence and/or garage where the temporary or permanent construction work does not increase the footprint of the structure lying within the buffer and no portion of the new work occurs closer to the critical area or required buffers than the existing structure."

d) Subsection 6.08.03.d(iii)(d)(iv)(d)(iv). further allows the reduced 25 foot buffer to be reduced to the existing setback "in the case of construction activity connected with an existing single family residence and/or accessory garage where the work does not increase the footprint of the structure lying within the buffer and no portion of the new work occurs closer to the required buffers than the existing structure, unless the structure or addition can meet required buffers."

Options: Options for the new SMP includes:

a) Continue the existing SMP regulations which in effect require no change in existing conditions between the existing buildings and the water for developed single family lots.

The advantages of this approach are:

- Recognizes existing development patterns
- Requires little administrative effort

The disadvantages of this approach are:

- Makes no contribution to mitigating cumulative adverse impacts of continuing land use and development patterns that cumulatively have resulting in listing several Lake Washington aquatic species as threatened or endangered. Most Lake Washington shorelines have been altered by human activities. In the Renton city and PAA, about 60% of the shoreline is developed single family use. No change in existing practices will likely result in no change in trends of degradation of habitat.
- Emphasizes the interests of shoreline property owners rather than the statewide interest in aquatic species

b) Continue the existing SMP regulations but encourage voluntary actions to enhance vegetation on the shoreline, that may include the benefits of

i) Reducing fertilizer, pesticide and herbicide discharge to the water;

ii) Providing shade for nearshore aquatic species

iii) Providing some food sources for nearshore aquatic species.

The advantages of this approach are:

- May lead to voluntary improvement in shoreline vegetation and related ecological functions. A voluntary program may affect more properties than a regulatory approach because of the relatively few properties on the Lake Washington shoreline that are likely to be subject to redevelopment given the large portion of the homes on Lake Washington that have been remodeled or replaced in the past 20 years. On the other hand, the effectiveness of voluntary programs is unpredictable.
- Recognizes existing development patterns

The disadvantages of this approach are:

- No guarantee of a substantial contribution to mitigating cumulative adverse impacts of continuing land use and development patterns that cumulatively have resulting in listing of aquatic species as threatened or endangered. Emphasizes the interests of shoreline property owners rather than the statewide interest in aquatic species
- Emphasizes the interests of shoreline property owners rather than the statewide interest in aquatic species
- To be effective, voluntary efforts require considerable administrative support in educating property owners and providing access to resources.

c) Treat existing setbacks, impervious surface and vegetation cover as non-conforming. Provide for vegetated buffers when major remodeling or redevelopment occurs based on a sliding scale that considers:

i) The degree of change and the approximate increase in potential impacts to the shoreline;

ii) Base buffer width on lot depth to avoid penalizing those with less ability to provide enhanced buffers;

iii) Provide for areas of lawn, deck or other recreation enjoyment while providing for more compatible vegetation cover

iv) Provide for species and placement that does not seriously interfere with views of the water from shoreline homes

The advantages of this approach are:

- Over time, will lead to enhancement of vegetation and reduction in continuing impacts from existing use patterns and additional impacts from intensification of use. The degree and pace of improvement, however is likely to be limited. In the past 20 years a large portion of the homes on Lake Washington have been remodeled or replaced. The number of parcels this applies to over the next 10 to 20 years may be limited. Over longer time periods, the benefits will be more substantial.
- Relates the degree of change required to existing physical configuration of lots.
- Emphasizes the statewide interest in ecological functions related to aquatic species while not unduly burdening shoreline property owners.

The disadvantages of this approach are:

- It does not address existing developed parcels that do not substantially remodel or replace residences.
- Requires more administration.
- It may be difficult to enforce in the long term as single family property owners maintain and alter their landscaping. Enforcement is likely to be enhanced by educational programs outlined in Option (b).

Recommendation: Implement as a regulatory approach option (c) on a sliding scale that tailors improvements to both the intensification of use on a site and lot depth.

4. Building height

Existing Code: The existing SMP has no provisions for building height. Building height is currently governed by underlying zoning and an interpretation agreed to with the Department of Ecology.

SMA Guidelines: Height is addressed height directly in two provisions and indirectly in relation to policies for aesthetics and consistency with adjacent development.

a) The statute in RCW 90.58.320 contains the following specific provisions regarding height.

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

b) The statute in RCW 90.58.100(2)(f) requires "A conservation element for the preservation of natural resources, including but not limited to *scenic vistas, aesthetics,* and vital estuarine areas for fisheries and wildlife protection [emphasis added].

c) The statute in RCW 90.58.040 contains a mandate to review regulations, plans, and ordinances relative to lands un adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state.

d) The new shoreline guidelines require the SMP in each shoreline environment to include regulations for building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards (WAC 173-26-211(4)(a)(iv)(A).

Option: In determining building height standards the city will need to consider view obstruction and whether there is an overwhelming consideration of the public interest to be served.

a) The city can propose continuing the height regulations of upland districts, which in many cases is substantially higher than 35 feet. For example:

- COR zoning on Lake Washington in the vicinity of NE 44th Street and on the Cedar River east of I-405 has a height limit of is 10 stories and/or 125 ft.
- UC-N2 zoning at the south end of Lake Washington has a height limit of 10 stories along primary and secondary arterials and 6 stories along residential/minor collectors.
- CD zoning along the Cedar River has a height standard of 95 feet.

Such height regulations involve issues that relate to both the criteria in RCW 90.58.100(2)(f) to address *scenic vistas, and aesthetics,* as well as the provisions in RCW 90.58.320 limiting height to 35 feet unless it will not obstruct the view of a substantial number of residences and then only when overriding considerations of the public interest will be served.

b) The city can limit height within the shoreline jurisdiction to 35 feet and allow a jump to the underlying zoning height at the shoreline jurisdiction line. An example of this is the Seahawks Training Center near NE 44th St. where the tall part of the building is outside of shoreline jurisdiction.

c) The city could adopt regulations for the shoreline and adjacent lands that includes some formula for building height to increase more gradually from the water to inland portions of the site. This could be done by stepped height regulations for by an angle from the shoreline that would determine height.

All of these options involve multiple tradeoffs between aesthetic and urban development goals of the city.

Recommendation: No specific recommendation at this time. It is likely that the appropriate regulations will depend on the context of a specific reach and may differ between shorelines of statewide significance and other shorelines.